

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:
AGRILAND FS, INC.

**ADMINISTRATIVE
CONSENT ORDER
2014-WW- 19**

Spill No. 041114-KDW-2110

TO: Agriland FS, Inc.
Attn: Brett Hafner
425 Hwy 1 & 92
Washington, IA 52353

Agriland FS, Inc.
Attn: John Knobloch
421 North 10th Street
Winterset, IA 50273

Agriland FS, Inc.
Attn: Edward G. Parker
5400 University Ave.
West Des Moines, IA 50266

I. SUMMARY

The Iowa Department of Natural Resources (Department) and Agriland FS, Inc. (Agriland) hereby agree to the following Administrative Consent Order (Order). Agriland agrees to pay fish restitution and investigation costs of \$3,086.64, Field Services investigation costs of \$2,376.60, and an administrative penalty of \$4,000.00 to the Department. See Sections IV and V for more details.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Keith Wilken
Iowa Department of Natural Resources
1401 Sunnyside Lane
Atlantic, Iowa 50022
Ph: 712/243-6251
keith.wilken@dnr.iowa.gov

Relating to legal requirements:

Aaron Brees, Attorney
Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319-0034
Ph: 515/281-5965
aaron.brees@dnr.iowa.gov

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 503219-0034

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II. JURISDICTION

This Order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part I (water quality) and the rules promulgated or permits issued pursuant thereto; Iowa Code section 481A.151, which authorizes the collection of restitution costs for harm to wildlife; and Iowa Code section 455B.109 and administrative rules in 567 Iowa Administrative Code (I.A.C.) chapter 10, which authorize the Director to assess administrative penalties up to \$10,000.

III. STATEMENT OF FACTS

The Department and Agriland hereby agree to the following statement of facts:

1. On the evening of Friday, April 11, 2014, a tractor, disc, and two anhydrous ammonia tanks owned by Agriland attempted to cross a bridge located on Oak Avenue in Section 29 of Victory Township in Guthrie County. The bridge collapsed, causing the tractor, disc, and tanks to fall into Brushy Creek.
2. The Department was first notified of the incident at approximately 9:10 p.m. by way of a page from the Department's Environmental Services Division's answering service. Upon receiving the page, staff contacted Brett Hafner of Agriland. Mr. Hafner reported that two anhydrous ammonia nurse tanks had fallen into Brushy Creek north of Guthrie Center in Section 29. Mr. Hafner initially reported that 4500 pounds of anhydrous ammonia had been released. Department staff inquired as to whether Brushy Creek could be dammed up to prevent further migration of the contaminants. According to Mr. Hafner, Brushy Creek was flowing too fast and too wide to allow for the installation of a dam.
3. At 9:21 p.m., the Department received a second page and made contact with Robert Kempf, Guthrie County Emergency Management Coordinator. Mr. Kempf stated that two anhydrous ammonia nurse tanks had fallen into Brushy Creek approximately one and a half miles north of Guthrie Center near 2121 Oak Avenue. He reported that product was in the water, but that the anhydrous ammonia tanks were shut off. He also reported that the tractor was leaking oil.
4. At 9:48 p.m., Department staff notified Des Moines Water Works of the situation.
5. Department staff arrived at the site at approximately 10:45 p.m. where they met with John Knobloch and Tom Brooke, both with Agriland, and Mr. Kempf. The Iowa State Highway Patrol and the Guthrie Center Fire Department were also present. Department staff observed that a tractor, disc, and two anhydrous ammonia tanks had fallen into Brushy Creek and that the bridge had also fallen into the creek. Department staff were informed that Agriland had scheduled a crane to remove the tractor, disc, and anhydrous

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tanks at approximately 9:30 a.m. the following morning. Staff instructed Agriland to have booms available during the removal activities in the event the tractor began to leak any fluids.

6. Beginning at approximately 7:30 a.m. on April 12, 2014, Department staff began visiting various access points along Brushy Creek, and the South Raccoon River into which it flows. They conducted field tests of the water at each location and collected samples which were submitted to the State Hygienic Laboratory for laboratory analysis. The field testing produced the following results:

Sampling Location/Time	Ammonia	pH	Temperature (Fahrenheit)	Dissolved Oxygen
Site X1 – 7:30 a.m. South Raccoon River at County Highway P28 (Nations Bridge County Park)	0-1 ppm			
Site X2 - 8:00 a.m. South Raccoon River at 285th Street	0-1 ppm			
Site X3 – 8:20 a.m. South Raccoon River at Tank Avenue	0-1 ppm			
Site X4 – 8:30 a.m. South Raccoon River at Montieth Road	10-30 ppm	9.3	54	
Site X5 – 9:30 a.m. South Raccoon River at Quail Avenue	4-5 ppm	8.6	54	
Site X6 – 11:05 a.m. Brushy Creek at 200th Street (Upstream Sample)	0-1 ppm	8.4	62	
Site X7 – 11:25 a.m. Brushy Creek at Nomad Trail	1-2 ppm	8.2	62	
Site X8 – 12:10 p.m. Brushy Creek at Highway 44	1-2 ppm	8.2	64	10-12 ppm
Site X9 – 12:30 p.m. Brushy Creek at 245th Street	1-2 ppm	8.3	66	6-8 ppm

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Site X3 (revisit) – 1:00 p.m. South Raccoon River at Tank Avenue	10-30 ppm	8.9	63	6-8 ppm
Site X1 (revisit) – 2:20 p.m. South Raccoon River at County Highway P28 (Nations Bridge County Park)	0-1 ppm	8.5	64	6-8 ppm

7. During the course of conducting the above water sampling, Department staff noted dead fish at sample sites X4, X5, X7, X8, X9.

8. Department staff subsequently visited the bridge collapse/spill site. They observed that the disc and the anhydrous ammonia tanks had been successfully removed from Brushy Creek and observed the removal of the tractor from the creek. Petroleum sheen was observed in the creek and booms were installed immediately downstream. Department staff instructed Agriland staff to keep the booms in place until all of the bridge had been successfully removed from the creek.

9. On April 13, 2014, Department Fisheries Bureau staff conducted a fish kill investigation on Brushy Creek and the South Raccoon River. The fish kill began at the Oak Avenue bridge on Brushy Creek and continued for approximately 8 miles downstream, ending where Montieth Avenue crosses the South Raccoon River. The investigation determined that 16,694 fish were killed.

10. On April 16, 2014, Department staff spoke with Mr. Hafner of Agriland. Mr. Hafner reported that the remainder of the bridge had been removed from Brushy Creek. Mr. Hafner stated that 1,720 pounds of ammonia had been lost from the anhydrous tanks and 15 gallons of hydraulic fluid had been lost from the tractor.

11. On April 21, 2014, Department staff received the laboratory analytical results from the State Hygienic Laboratory, including the following:

Location	Date	Ammonia
Site X1 – South Raccoon River and County Highway P28	4/12/2014	0.11 mg/L
Site X3 – South Raccoon River and Tank Avenue	4/12/2014	13 mg/L
Site X4 – South Raccoon River and Montieth Road	4/12/2014	24 mg/L

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Site X5 – South Raccoon River and Quail Avenue	4/12/2014	3.0 mg/L
Site X6 – Brushy Creek and 200th Street (Upstream Sample)	4/12/2014	0.070 mg/L
Site X8 – Brushy Creek and Highway 44	4/12/2014	0.59 mg/L
Site X9 – Brushy Creek and 245th Street	4/12/2014	1.6 mg/L

12. The above results demonstrate elevated Ammonia levels in Brushy Creek downstream from the release, but not upstream, and in the South Raccoon River downstream from its confluence with Brushy Creek. These findings are consistent with a single source of contamination originating at the Oak Avenue accident site.

IV. CONCLUSIONS OF LAW

The parties hereby agree that the following conclusions of law are applicable to this matter:

1. Iowa Code section 455B.186(1) and 567 I.A.C. 62.1(1) prohibit the discharge of "a pollutant" into "a water of the state" unless it is released pursuant to a valid permit issued by the director. National Pollution Discharge Elimination System (NPDES) permits are issued to point sources pursuant to Iowa Code section 455B.197 and 567 I.A.C. chapter 64. The Environmental Protection Commission (EPC) has adopted federal effluent limitation standards by reference, and imposed different standards when necessary to comply with applicable water quality standards. See 567 I.A.C. 62.8(2).

2. A "pollutant" is defined in Iowa Code section 455B.171(18) as "sewage, industrial waste, or other waste." Ammonia, such as that released into the environment in the present case, is a pollutant under this definition.

3. Brushy Creek and the South Raccoon River are "waters of the state" pursuant to Iowa Code section 455B.171(37) which defines the term to include "any stream,...watercourse, waterway,...drainage system, and any other body or accumulation of water...natural or artificial, public or private, which are contained within...the state...."

4. As Agriland did not have a NPDES permit authorizing the discharge of ammonia to these waters, it has discharged a pollutant into waters of the state in violation of the above provisions.

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5. Iowa Code section 455B.173 states that the EPC shall develop water quality standards which shall, at a minimum, maintain the existing quality of the water of the state. The EPC has done so in 567 I.A.C. chapter 61.

6. 567 I.A.C. 61.3(2) states that all surface waters of the State "shall be free from substances attributable to wastewater discharges or agricultural practices...which are acutely toxic to human, animal, or plant life." Agriland's ammonia discharge which caused the deaths of fish is a violation of this provision.

7. Iowa Code section 481A.151 states that any person who is liable for polluting water of the state in violation of state law shall be required to pay restitution for any resulting injury to wild animals. This section authorizes the Natural Resource Commission (NRC) to adopt rules applicable to the method of calculating restitution assessments and authorizes the Department to recover these assessments through Iowa Code chapter 17A contested case procedures. The NRC has adopted such rules in 571 I.A.C. 113.

8. Based on the authority provided by and methods specified in 571 I.A.C. 113 and 567 I.A.C. 133.6, the Department is authorized to collect, and Agriland is liable for the following:

Fish restitution	\$1,846.22
Fisheries investigation costs	\$1,240.42
Field Services investigation costs	\$2,376.60

V. ORDER

THEREFORE, the Department hereby orders and Agriland agrees to the following:

1. Agriland shall pay to the order of the Iowa Department of Natural Resources a total of \$5,463.24 for fish restitution and investigation costs within 30 days of receipt of this Order.

2. Agriland shall pay an administrative penalty of \$4,000.00 to the order of the Iowa Department of Natural Resources within 30 days of receipt of this Order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties in Iowa District Court of up to \$5,000 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision. Additionally, Iowa Code section 455B.109 authorizes the EPC to establish by rule a schedule of civil penalties up to \$10,000 which may be assessed administratively. The EPC has adopted this schedule with procedures and criteria for assessment of penalties in 567 I.A.C. chapter 10.

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ECONOMIC BENEFIT: Agriland did not benefit economically from the incident. Therefore, no penalty is assessed for this factor.

GRAVITY: A discharge resulting in a fish kill is a very serious violation. In this case, many thousands of fish were killed. In addition, as a result of the contamination reaching the South Raccoon River, Des Moines Water Works had to temporarily stop its use of Raccoon River water. As a result, \$3,000 is assessed for this factor.

CULPABILITY: Signs exist along Oak Avenue, on both the north and south sides of the bridge, indicating a maximum weight limit of 18 tons. The signs were not obstructed from view. The Agriland employee driver was found guilty of a violation of I.C.A. §321.471(2)(a), "Violation of Weight Embargo" by the Guthrie County District Court in Case No. 05391 NTA 0011172 on July 24, 2014. The Department acknowledges that Agriland's discharge was unintentional and it was reported timely. A penalty of \$1,000 is assessed for this factor.

Based on the above factors, a total penalty amount of \$4,000 is assessed.

VII. WAIVER OF APPEAL RIGHTS

Iowa Code sections 455B.175, 481A.151, and 561 I.A.C. 7.4(1), as adopted by reference by 567 I.A.C. chapter 7 and 571 I.A.C. chapter 7, authorize a written notice of appeal to the EPC and NRC, respectively. This Order is entered into knowingly by and with the consent of Agriland. By signing this Order all rights to appeal this Order are waived.

VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.175.

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Dated this 13 day of December, 2014


CHUCK GIPP, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 20th day of December, 2014

Agriland FS, Inc.; Keith Wilken; Field Office 4; Aaron Brees; C(1), C(6)(a).